

No. 83-173

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CLERK

In The  
**Supreme Court of the United States**  
October Term, 1983

— o —  
MILTON R. WASMAN,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

— o —  
On Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit

— o —  
**JOINT APPENDIX**  
— o —

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Petition for Writ of Certiorari filed August 1, 1983  
Certiorari Granted October 31, 1983

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**CHRONOLOGICAL LIST OF RELEVANT  
DOCKET ENTRIES**

<b>Date</b>	<b>Proceedings</b>
August 9, 1978—	Indictment returned by Federal Grand Jury charging the Defendant with obtaining a passport using a false name.
September 10, 1979—	Jury returns verdict of guilty.
October 18, 1979—	First Sentencing hearing at which Defendant was sentenced to two years but pursuant to split sentencing provision whereby he is to serve six months incarceration and then be placed on probation for three years.
October 19, 1979—	Notice of Appeal filed.
April 2, 1981—	United States Court of Appeals for the Fifth Circuit reverses conviction and remands for a new trial (reported at 641 F. 2d 326).
July 17, 1981—	Jury verdict of guilty at second trial.
August 31, 1981—	Second sentencing hearing at which Defendant was sentenced to a straight two years incarceration.

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UNITED STATES DISTRICT COURT  
for the Southern District of Florida

United States of America vs.  
Defendant Milton Wasman

Docket No. 78-253-CR-NCR

JUDGMENT AND PROBATION/COMMITMENT  
ORDER

In the presence of the attorney for the government the  
defendant appeared in person on this date—Oct. 18, 1979.

\* \* \*

X WITH COUNSEL James Russ, 441 1st Fed.  
Bldg., 109 East Church St., Orlando, Fla. 32801.

PLEA: \* \* \* ☒ NOT GUILTY.

There being a finding/verdict of \* \* \* ☒ GUILTY.

FINDING & JUDGMENT: Defendant has been con-  
victed as charged of the offense(s) of False Statement on  
an Application for a U. S. passport, in violation of Title  
18, USC Section 1542.

SENTENCE OR PROBATION ORDER: The court  
asked whether defendant had anything to say why judg-  
ment should not be pronounced. Because no sufficient  
cause to the contrary was shown, or appeared to the court,  
the court adjudged the defendant guilty as charged and  
convicted and ordered that: The defendant is hereby  
committed to the custody of the Attorney General or his  
authorized representative for imprisonment for a period  
of TWO (2) YEARS or until otherwise discharged by due  
process of law, it being further

ORDERED AND ADJUDGED, pursuant to the split-  
sentence provision of Title 18 USC, Chapter 231, Section

3651, that the defendant be confined to a jail-type institution for a period of SIX (6) MONTHS, thereafter execution of the remainder of sentence of confinement be suspended and, commencing immediately upon discharge from incarceration, the defendant shall be placed on probation for a period of THREE (3) YEARS under the Standing Conditions of Probation as defined by the Court's Order entered August 1, 1964. It is further

**SPECIAL CONDITIONS OF PROBATION:** ORDERED AND ADJUDGED that execution of sentence of confinement shall be deferred until November 23, 1979 at 10 A. M., at which time the defendant shall surrender himself to the institution designated by the Bureau of Prisons, at his own expense, or in the alternative, to the United States Marshal in Miami, Florida.

**ADDITIONAL CONDITIONS OF PROBATION:** In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT RECOMMENDATION:** The court orders commitment to the custody of the Attorney General and recommends, Eglin Air Force Base, Florida.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U. S. Marshal or other qualified officer.

Signed by ☒ U.S. District Judge /s/ Norman C. Roettger, Jr., 19 Oct. 1979.

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UNITED STATES DISTRICT COURT  
for the Southern District of Florida

United States of America vs.  
Defendant MILTON WASMAN

Docket No. 78-253-CR-NCR

JUDGMENT AND PROBATION/COMMITMENT  
ORDER

In the presence of the attorney for the government the defendant appeared in person on this date—August 31, 1981. \* \* \* ☒ WITH COUNSEL Jay Moskowitz, Peninsula Fed. Bldg., Rm. 501, 200 SE 1st St., Miami, FL.

PLEA: \* \* \* ☒ NOT GUILTY.

There being a finding/verdict of \* \* \* ☒ GUILTY.

FINDING & JUDGMENT: Defendant has been convicted as charged of the offense(s) of False Statement on an Application for a U.S. passport, in violation of Title 18, USC Section 1542.

SENTENCE OR PROBATION ORDER: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS, or until otherwise discharged by due process of law. It is further

ORDERED that the execution of the sentence of confinement be deferred until September 30, 1981 at 10 A. M.

at which time the defendant shall report to the institution designated by the Bureau of Prisons at his own expense, or in the alternative, to the U. S. Marshal in Miami, Florida.

\* \* \*

COMMITMENT RECOMMENDATION: The court orders commitment to the custody of the Attorney General and recommends,—

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U. S. Marshal or other qualified officer.

SIGNED BY ☒ U. S. District Judge /s/Norman C. Roettger, Jr., Aug. 31, 1981.

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[3SR1]\*

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF FLORIDA

Case No 78-253-Cr-NCR

UNITED STATES OF AMERICA,

vs.

MILTON WASMAN

United States District Court  
299 East Broward Boulevard  
Fort Lauderdale, Florida  
October 18, 1979

The above-entitled matter came on for sentencing before the Honorable NORMAN C. ROETTGER, JR., United States District Judge, pursuant to Notice, commencing at 9:30 o'clock a. m.

APPEARANCES:

KEVIN MOORE, ESQUIRE  
Assistant United States Attorney  
On behalf of the Government

JAMES RUSS, ESQUIRE  
On behalf of the Defendant

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\*Bracketed number refers to page location in 3rd Supplemental Record on appeal 3SR—.



[3SR2]

## I N D E X

## WITNESS

Mrs. Mildred Wasman

Milton Wasman

## COLLOQUY

8

12

[3SR3] The Court: Good morning, lady and gentlemen.

I received some last minute matters. Two or three things have come up in what was scheduled this morning that required some time to review before we could begin. However, we are ready to begin now in the case of United States versus Wasman.

The Deputy Clerk: State your appearances for the record.

Mr. Moore: Kevin Moore for the Government.

Mr. Russ: James M. Russ, on behalf of Mr. Wasman.

The Court: Mr. Russ.

Mr. Russ: Morning, Judge Roettger. Mr. Wasman is here.

The Court: I have reviewed the Presentence Report, Mr. Russ, together with all the enclosures, attachments to it.

Have you had a chance to review the P.S.I., sir?

Mr. Russ: Your Honor, the Presentence Report dated the 9th of October was forwarded to Orlando and I had the opportunity on Monday morning of this week to read it, and after reading it, I prepared a supplement containing my thoughts and [3SR4] observations which I forwarded to the Court which the Court should have received yesterday.

The Court: Well, I have not received them. Have you a copy, Mr. Russ?

Mr. Russ: Your Honor, you should have received the package yesterday which contained the original of that and also a piece of correspondence.

The Court: Alas, the mails are—

Mr. Russ: No. This was sent by courier.

The Court: Does anyone on the staff know?

Mr. Russ: I am holding a receipt in my hand that says you got it.

The Deputy Clerk: Who signed it?

Mr. Russ: It doesn't say.

The Court: I hate to delay it but I hate worse to review extensive material on the bench and feel any time constraint, even subconsciously, by doing that. I am going to take a recess and review your copy, if I may.

Mr. Russ: I would appreciate that, Your Honor.

The Court: I think it's much better to do this in the relaxation of chambers than out here. A brief scanning, I see some duplication with what I have already read. So it should not take me all [3SR5] that long. And I ought to be able to read it rather rapidly. Certain areas just to refresh my memory.

Court is in recess.

(Thereupon, a recess was taken, after which, the following proceedings were had):

The Court: Apparently, Mr. Russ, it's down in the Clerk's Office.

Mr. Russ, for the record, to take care of some house-keeping matters while counsel are present, and also the

Defendant is present, judgment of acquittal, motion for new trial. I also want to make sure the record reflects that I am amplifying the rulings I made in connection with the Government's motion to exclude certain testimony as irrelevant and I don't have that in final form yet, but specifically reserving the right to enter that on a nunc pro tunc basis and expect to have it done within a week or ten days.

Before we get back to the P.S.I. and enclosures, I have a motion also for protective order, Malcolm Williams and Sentinel Star Company, who apparently is the publishing company for the Orlando Sentinel, Orlando Star, I'm not sure which, or both.

[3SR6] Mr. Russ: Your Honor, I treated that matter in the letter that is contained in that supplement that I handed up to you.

The Court: The article is in here and it's also attached to this motion for protective order.

Mr. Russ: As I explained to you in the supplement to the Presentence Investigation Report, the newspaper article I felt gave support and corroboration to what I had represented to you and to the jury in the course of the trial. And when I noted the news article in our local paper, I caused a subpoena to be placed on the writer of the article which in turn brought about the motion for protective order filed by the news reporter and by the publisher. As I stated to you, I felt that the record is clear enough, that it wasn't necessary to get off on a collateral First Amendment, Sixth Amendment controversy, so based on that I made the decision to withdraw the

subpoena and so advised the attorney for the news reporter.

The Court: Very well. The matter is moot then as to the subpoena issued to the reporter [3SR7] of the Orlando papers.

What is the status now on the material? My understanding is my secretary did sign for a parcel yesterday.

Mr. Russ: It would appear that in all likelihood it is in your office someplace but it's simply the original of which you have before you. There is one other item which was a letter, a personal letter from Mrs. Wasman to you, which I did not know the contents of. However, Mrs. Wasman is here and I do desire to have her address the Court at the appropriate time in the course of the sentencing, Your Honor.

The Court: Very well.

It's always a source of some embarrassment when papers are mislaid somewhere in chambers or offices of the Court or the Clerk.

If we can proceed without it, let's do so.

Mr. Russ: All right. May I at this time call Mrs. Mildred Wasman.

The Court: Very well.

Mr. Russ: Mrs. Wasman, will you come forward.

The Court: Mrs. Wasman, I apologize that I haven't had the chance to read the letter.

Debbie, will you please administer the oath, [3SR8] please.

(Witness sworn.)

Mrs. Wasman: The letter you didn't receive took a great deal of emotional effort because it made it necessary for me to sit down and review some terrible years. In that letter, I told you that when you sentenced Milton Wasman, you really are sentencing two people because I have been party to everything that's ever happened to him. I have been part of his life and I have been made a part of this nightmare we have gone through for the past five years.

I have been used as a lever by the people who started this whole horrible nightmare and it all started because greedy people didn't get enough. It involved land that had come in part to my children and me as a result of money that was left by my mother-in-law. It's land that my husband worked for years to hold onto and to develop. And when he met with these people with whom he became involved, it was with a goal in mind of developing something wonderful.

These people became our friends. They were in my home. I became friendly with their wives. But then, when things began to go bad, [3SR9] circumstances beyond our control, the world money situation, the recession, and my husband wanted to call a halt, they wouldn't do it because they had a good thing. And then my husband began to suffer consequences of being gullible and having poor business judgment. And that's his crime.

We handed over hundreds and hundreds and hundreds of acres of developed land with the understanding that they would leave us in peace and not continue to threaten and pressure. It was pressure that I had seen cause my husband to have a stroke. I, at one time, told them if they didn't stop trying to use me, if necessary,

I would leave my husband in order to not be used against him. But I guess they knew me very well. They agreed that if I did this, that would be it, they would help to satisfy the claims of the people who had invested. But they didn't do that. They took that land and used the proceeds to line their own pockets and then came back and I have been faced with lawsuit after lawsuit after lawsuit aimed against me. And they were just for the purpose of creating pressure. They kept getting thrown out and new ones came.

[3SR10] These are people who have used blackmail and threats. I've received a telephone call one Sunday morning at 7:00 o'clock from Mr. Connolly in England who threatened that this very thing would happen unless we paid them \$50,000 for himself. I couldn't believe it. I couldn't believe that this system that was supposed to protect us would be used against a good man, a perfectly respectable good man, who's guilty of not being able to know what's best for himself. None of this need to have happened if he had been as greedy as the others because he would be vulnerable. I have been party to listening to the threats to feeling pressure.

At the age of sixty-one, we have lost five years out of our lives. It's been torture. Lost the future. I had to go to work. I took the day off because we have no income. My husband has lost his practice, his reputation, his health. How much more punishment, how much more punishment do we have while the people who openly admit what they have done and why they have done it are protected?

I have grandchildren who—That man is the [3SR11] most wonderful, warm, loving human being who's ever

been. We are stable people. We have lived in the same house for thirty-nine years. We have lived in the same community. We are the people the system is supposed to be for and we have been made victims of it. And I find myself completely lost as to how such things could be. The newspapers. The newspapers. We have had no way to combat it. It's like something out of a bad story. We have been stymied at every turn because we just had to struggle to survive.

I think I said it better and less emotionally in my letter. I'm sorry you didn't get it.

The Court: You need not apologize at all.

Mrs. Wasman: But it's like everything else that's happened.

Please, Your Honor, I beg you, look at the whole picture, look at the people.

The Court: Thank you, Mrs. Wasman. You are, indeed, a lovely lady. I doubt the letter could be nearly as dramatic, effective as your able presentation.

Mr. Russ, are you ready to proceed?

Mr. Russ: Yes, Your Honor. Mr. Wasman would like to address the Court.

[3SR12] The Court: Very well.

Mr. Russ: Mr. Wasman.

The Court: Mr. Wasman, you may say anything you like in your own behalf, anything at all in mitigation of punishment.

(Defendant sworn.)



Mr. Wasman: I guess my wife has sort of expressed in a broad sense what has been for us an ordeal. My wife didn't go into great details of what probably would be the interesting story that Your Honor missed at trial, but it would not really add much to that aspect.

I guess the best thing I can tell you is that I have lived here all but seven years of my life, and, as Mildred pointed out, we built our house in 1941 and we have lived in it ever since, and I have been active in the community, have enjoyed and relished and reveled the friendship and respect that I have had in the community, and I am frank to tell you that it has remained to a great extent.

I have received letters from people, I have received requests from people who wanted to write letters on this matter but I felt that in discussing the matter with Mr. Schwartz, that enough [3SR13] was enough and too many would be just redundant. So that it has in a way paid off.

I realize that I am here before you as a result of a stupid situation in which I entered into to try to alleviate the problems we had. Not done with the purpose of taking anything from anybody or doing anything to anybody, but done only for a commission which was promised me. I was assured if I would cooperate with Mr. Conninos, he would like to cooperate with me because he felt that his associates over here were defrauding him. I now recognize that Mr. Conninos feels that everyone with whom he does business, if they don't give him full participation, is defrauding him. I accepted his invitation initially to go see him for that purpose and that purpose alone. Had no other business interest involved. When I invited him to come back—And I had arranged to bring Mr. William Loucks, an attorney in Daytona, along for the purpose of

discussing the matters he was interested in because Mr. Loucks was familiar with it and I felt that between us we could eliminate this four-and-a-half, five years of harrassment, extortion and blackmail.

[3SR14] Several times, I received phone calls, not from thugs, not from gangsters, but from members of the bar, who were hired by these people, threatening to kill me, and my wife was called, told the same thing, unless we capitulated and turned over more land.

They filed innumerable lawsuits alleging fraudulent conduct, couldn't support it and the case—

The Court: Who filed these lawsuits?

Mr. Wasman: A gentleman in Orlando.

The Court: Against you?

Mr. Wasman: Against me and my wife and everybody that ever worked for me or with me or they knew. None of which he could support, and the cases were dismissed. They would\* refile them. But what he did was he made them so lurid that the newspapers and Mr. Williams, who has written that article, had a field day. And, as a result of that field day, he kept pressing and insisting that state agencies take some action. They finally did. They filed charges. Mr. Russ filed a number of motions to dismiss and they granted the first one. There are several more which are valid that were not necessary to grant, but there is no basis [3SR15] whatsoever to grant except that they were under pressure, and you know, when you're in a political office and a newspaper, that is very powerful throughout the state is pressuring you, you better do something or you're going to get some

static. And I say this to you as a fact not a feeling. I tell you how I feel when I feel, but I tell you this is not a feeling.

These are the reasons I went to meet Mr. Comminos, and then he induced me to help him, and if I would help him, he would come over, and I felt that I would have somebody who could verify some of the things that he claimed had been frauds perpetrated on him and his people since we had turned the property over to them for the purpose of having them develop it. He was upset because his associates immediately thereafter put mortgages on everything they could and kept the money and put him in the picture. So he was a very frustrated gentleman and I thought it would be mutually advantageous if we put what we knew together. And that was my purpose in going to see him. Had nothing to do with land or Arabs or anything like that. And then I agreed to help him because that was [3SR16] the one point which he would come and participate and work with Mr. Loucks. And then, after that, I got nothing. They started the extortion, blackmail.

I was kidnapped. I was induced to go, invited to go to Marbella, Spain, told I was to meet somebody. I went to the house with them and then they bound me, hand and foot, and kept me there and made all sorts of threats. They were going to—when I think of this, I am amused because it must have come from Mr. Manning, who is referred to in my experience as Mr. Connolly. Mr. Manning was the man with whom three other people from Curran's office in New York arranged the kidnapping. He told me that if I didn't produce a million-and-a-half dollars for him, that they were going to have some

fishermen pick me up in a boat, put me under the floorboards, take me out to sea, keelhaul me, and then if I didn't succumb to their wishes, they would tie an anchor to me and throw me overboard. I smile at that because keelhauling, I though, had been abolished as a technique in the revolutionary days.

Anyhow, I was interested in that article [3SR17] which I think Your Honor has seen because he said I was stubborn. I guess that's a good word to describe someone who cannot comply. He might as well asked me for the moon and insist that I deliver it immediately because I couldn't, and I told him so but he didn't believe me. And they negotiated and they promised me—They made me a deal. I did not make them a deal. They offered me a deal that if I would give them some land, and I believe the amount was three quarters of a million dollars in land, free and clear, good title, put it in a Swiss corporation who had a registered name or something I couldn't trace or something like that, they would let me free, if I promised to do it; and if I didn't do it within thirty days, they would put out a contract on me. He was very insistent asking if I knew what a contract meant. I told him I had been to a number of gangster movies in my lifetime and I understood perfectly well what it meant. He said "Well, you have that." I received innumerable phone calls concerning that, plus concerning the fact that he wanted \$25,000 from me to begin with for himself. And then when he found out that I had called the hotel and told them what had [3SR18] happened and asked them to please send the bill to me, I would pay it, and they should then send my clothes and things, he wasn't able to get those things as he—I don't know what he

thought they were worth—he then raised the ante to \$50,000.

I talked to Mr. Putz at the FBI about it, what instruction I should follow. He said "Tape the conversations," which I did, "and we'll see if we can get jurisdiction to do something." I endeavored to call him subsequently. And, for a long time, I had to have somebody go with me wherever I went or follow me so that I would be protected, at least. I thought that they meant it.

As a result, the newspaper publicity effectively destroyed my practice. I am going to have to close the office in the next two weeks and do something working for somebody, if I can, or whatever.

As you can well imagine, I have a health problem which I am trying to overcome. I am not going to permit it to incapacitate me. I just don't believe—

The Court: I'm sorry, your voice dropped.

[3SR19] Mr. Wasman: I am not going to let it, permit it to incapacitate me. I am going to do what I can. And I am working with a doctor now who says that if I am very careful and eat exactly what he prescribes and take the proper medication and take a special exercise series, that I have to follow rigorously—I shouldn't say rigorously, but continuously, that will alleviate whatever the problems are, somewhat. So I do it and I must say I have noticed some improvement and I am, you know—Anyhow, that's where I am, sir.

The Court: Very well, Mr. Wasman.

Mr. Wasman: Thank you.

The Court: Let me ask you one question. Who is Barbara Bucci? Is she a friend or employee or what was her station?

Mr. Wasman: No. She's a lady that I have known for a few years. She owned a half interest in a pizza restaurant and I handled some matters there for them until recently when she had a flare-up with her partner and quit there.

She helps me in one item of some real estate management that we had set up some years ago or had been helping me. She doesn't anymore.

The Court: She was not an employee?

[3SR20] Mr. Wasman: No, sir. She is not and she never has been.

The Court: Thank you, sir.

Mr. Russ: Judge Roettger, that's all I have. If you have any questions of me. I realize this is somewhat of a complex, as we described earlier, bizarre fact pattern.

The Court: It is bizarre.

Mr. Russ: Is there anything that's in doubt in your mind that I can answer? I'd be pleased to do it.

Thank you.

The Court: No, I have nothing. No questions.

Anything from the Government, Mr. Moore?

Mr. Moore: Yes, Your Honor.

Your Honor, I had prepared some comments here at the beginning, primarily for the sake of Mrs. Wasman, but I think they are appropriate in any event.

My comments here are an obligation to another interest, and my comments cannot be cast in the emotion that Mrs. Wasman displayed, and yet I think that they carry equal weight. We take no satisfaction in the suffering of either Mrs. [3SR21] Wasman or, for that matter, the victims of the fraud that caused the false statement to be made in the first place.

There is no such thing as a typical case. When it comes to sentencing, I think that's particularly so where there is an attorney involved. I believe that there are substantial facts in this case which dictate, I believe, a substantial period of incarceration.

Mr. Wasman has cast himself in a certain image that he would like this Court to believe which I believe is false. And that is the image of a victim of a fraud and of a man who is gullible in business affairs and who has been caught up in an isolated instance of a minor transgression of the law. And I think that on each of these counts, the facts belie the image that he would like this Court to believe.

Mr. Wasman is before the Court as an attorney, an attorney of some years of practice in this area, and I think with any attorney, there is an expectation of a knowledge of law, particularly the criminal law that we do not automatically assume with other individuals. I think we hold them to a higher standard. I think that, as a [3SR22] profession, they ask for certain privileges and are accorded certain privileges and they must also individually and collectively bear the responsibilities and duties of the profession. The reputation of the profession suffers when individuals such as Mr. Wasman who bear the cloak of attorneys use their position and commit the

violations or whatever they may be of law. I think for that reason alone, incarceration is warranted because it alerts to the public that there is an awareness on the part of the judiciary that when one of their own commits a violation he will not be treated lightly.

The suggestion of a poor business judgment is, I believe, another characterization of what is really his disregard for what the law is. Mr. Wasman is not new. He's been before the Court on criminal matters. I think it is a matter of importance in assessing in whether this is an isolated instance, whether there is the character of the individual that extends beyond the isolated instance to suggest that Mr. Wasman has had a continuing disregard for the law; and I refer to his prior conviction on a tax matter. Mr. Wasman was convicted there. At that time, it is my [3SR23] understanding that the medical issues were raised as they were in this case, pretrial, as they have been now. I believe Mr. Wasman's knowledge of the law has given him the insight that seeing the benefits from a litigating standpoint to raise the medical issues. I am not suggesting that they do not exist but I do not believe that they have impaired his ability to act in a daily routine. They have served his interest in avoiding responsibility for answering to the charges that he has faced in the past and I do not believe that they should be used as an opportunity to avoid answering for the charges that he stands before the Court today.

It is my understanding that at the time of his past sentencing, he was only one of a number of individuals that the Internal Revenue Service directed their efforts at, that did not receive a period of incarceration. Your



Honor, again with respect to the medical, before I move on to another point, this matter was again raised, and I alluded to the indictment that is still pending in front of Judge Gonzalez in this District, the medical problems were raised there.

I think that the charges there, while not [3SR24] resolved, again point to the question of the context of Mr. Wasman's own participation in the fraud scheme where a lot has been said as to how Mr. Wasman got involved in the scheme. Suffice it to say that a grand jury, at least, has seen fit to disbelieve Mr. Wasman's own version at least at this point.

Your Honor, the suggestion that this is an isolated act, I think, when we look at the facts of this case, we see a very sophisticated individual having a disregard for the law, willing to engage in a number of separate acts in order to further his own interest in that in making a false statement on the application, he saw fit to obtain a birth certificate in the name of another, obtain a driver's license in the name of another, have another individual assist him in the participation of the offense. All of these facts and circumstances, I think, suggest that there was some premeditation in the offense he was committing. Moreover, by the time the offense was charged, the passport in the name of Hendrick was not in the possession of the Government, we subsequently obtained it. And hearing the other facts in the case, I think we [3SR25] can see now that there were other offenses committed, as well, in furtherance of the scheme to defraud certain Arab investors or so-called Arab investors, which Mr. Wasman was apparently willing to engage in. And that was the use of the passport which was a separate

offense, as well as the obtaining of the passport after having made the false statement on the application.

Briefly, Your Honor, I don't think that Mr. Wasman has demonstrated anything that entitles him to the mercy of the Court. I believe a substantial period of incarceration is warranted both on the basis of Mr. Wasman's conduct in this case, his prior conviction and the deterrent effect it would serve on other attorneys, as well as other individuals.

Thank you, Your Honor.

The Court: Thank you, Mr. Moore.

It doesn't have any effect upon the sentencing but it is my understanding that Mr. Comminos was killed after the trial, driving to the airport.

Mr. Moore: Your Honor, there's been a number of personal hardships that I did not bring up [3SR26] which I know the Court does not want to consider them in sentencing.

The Court: I don't consider them but I am curious. This case seems replete with colorful facets.

Mr. Moore: Mr. Sergeant from the Carlton Tower Hotel came to the United States and while here suffered a heart attack on Saturday during the trial.

Mr. Comminos and Mr. Manning, while returning to Miami, were in an accident. Mr. Comminos was fatally killed in that accident and Mr. Manning fortunately suffered a concussion and was released a few days after his hospitalization and now is back in Europe.

The Court: Very well.

Mr. Russ.

Mr. Russ: Your Honor, may I reply to two points?

The Court: Yes, sir.

Mr. Russ: I failed to clarify in my supplement to the Presentence Investigation that the tax matter that Mr. Wasman was convicted on in the early 1970's involved the misdemeanor offense of failing to file a tax return, and that was [3SR27] before Judge Scott in Jacksonville. And he was one of a number of professionals in Southern Florida who were charged as part of an Internal Revenue Service campaign and he was before the Court and entered a plea of guilty to that charge and he received a sentence of probation. Failure to file the income tax return flowed from the situation where the person who had prepared the tax return had represented to Mr. Wasman that the tax return had, in fact, been filed. He believed that it had been filed but, in fact, it had not been.

Second point I'd like to respond or rebut is that the suggestion on the part of the prosecuting attorney that Mr. Wasman is involved or has been involved in a large scheme involving fraud. The Government has brought an Indictment to that effect more than a year ago in this Court. The Government has not seen fit in more than a year, despite the Speedy Trial Act, despite protections of the Sixth Amendment, has not seen fit to bring Mr. Wasman to trial on that charge.

The Court: Didn't you file a motion for continuance, citing health reasons of Mr. Wasman?

Mr. Russ: No, sir. First of all, I don't [3SR28] represent Mr. Wasman in the mail fraud case.

The Court: Are you aware of whether or not he has filed a motion for continuance on that basis?

Mr. Russ: I don't know. And if the prosecutor represents that, I do not challenge that because I do not know. But I am simply making the point that the Government attempts to paint with a broad black brush here and suggests that somehow Mr. Wasman comes before this Court tainted by virtue of a grand jury indictment where Mr. Wasman was not before the grand jury. Mr. Wasman has never had his opportunity to tell that grand jury or a Court or a jury or anybody else in a position to make a decision on this matter what his position and his version is of that matter.

So I, in rebuttal, respectfully suggest it's not appropriate for the Government to be arguing that Mr. Wasman is entitled to some sort of enhanced punishment in this passport case by virtue of the fact that there is a pending grand jury indictment for mail fraud.

The Court: I don't consider pending cases in determining sentence because my theory of [3SR29] sentencing is simply that one can consider prior convictions, and each judge who has somebody with more than one conviction should consider it, not only may, but should consider prior convictions, give whatever weight that judge feels is appropriate, but if judges at the time of considering prior convictions also consider pending cases, and then if that pending case resulted in a conviction, one of the sentences would inevitably have been a pyramided sentence. Consequently, I don't consider pending cases on that basis.

I think it is proper that they be in the Presentence Report and the appellate courts have upheld the consideration of pending matters as I understand them.

Mr. Russ: That is all I have.

Mr. Wasman is prepared for sentencing at this time.

The Court: I have considered a number of factors here and many things to consider in this particular case. The Defendant's age and health is, of course, a mitigating factor. His status as a member of the bar is, of course, an aggravating factor. I know that sounds Calvinistic [3SR30] but I think it's more or less an accepted principle in this country. We all hear the complaint voiced that people with possessions receive more lenient sentences than people without means, and they can point to examples that seem to indicate that. There are other examples, of course, that indicate the opposite, in that a plumber will receive probation for the same offense for which a lawyer will receive jail time.

There is, of course, the matter of prior conviction. The conviction is within ten years. And the P.S.I. does not reflect whether there were such mitigating factors as suggested by counsel.

The actual offense, itself, is a classic example of criminal bad judgment. Not something that occurs on the spur of the moment but took some individual diligence and effort to obtain the driver's license that's false and the knowing false passport application. Somehow there is some revulsion inherent in a situation where someone utilizes the name of a dead acquaintance. Perhaps it's ghoulish conduct. It's not as reprehensible to my way of thinking as utilizing the [3SR31] name of a dead relative which I have had before me, too.

And I must consider the purpose, the motivation. Although that is not relevant at the time of trial, it is relevant at the time of sentencing. If the motivation were to get a clean passport, as that phrase is used in order to facilitate importation of narcotics because one had made too many trips to a source country on his own passport, that type of motivation, I think, merits substantial incarceration. And although there is some reprehensible aspect about the bigotry involved and trying to dupe Arab investors, perhaps there is some mitigating factor because the clear bigotry involved is on the part of Arabs towards people of Jewish background. I am not condoning it by that conduct. I am certainly not condoning bigotry either way. But the motivation for obtaining this passport is not as heinous as many other situations that do come before federal courts.

I inquired as to whether the corroborating witness was an employee. Some curiosity about that because I have no use for people who take advantage of an employee and involve them in [3SR32] conduct for which the witness could have been indicted. That wasn't the case. It's still reprehensible. When it involves a friend, it is not as reprehensible.

I am going to impose a split sentence in this case, maximum period of incarceration.

In the case of United States of America vs. Milton Wasman, the Defendant having been adjudicated guilty pursuant to the jury verdict of guilty, it is adjudged that the Defendant is hereby committed to ~~the~~ custody of the Attorney General or his authorized representative for imprisonment for a term of two years, and on condition that the Defendant be confined in a jail-type or

treatment institution for a period of six months. The execution of the remainder of imprisonment is hereby suspended and the Defendant is placed on probation for a period of three years to commence upon the Defendant's release from confinement.

You have a right of appeal, Mr. Wasman. Your appeal should be filed within ten days. You may file a notice of appeal even if you don't have the funds to pay for it, prosecute an appeal along that basis.

[3SR33] The Clerk may be directed to file a notice of appeal in your behalf.

Mr. Russ, you are instructed to remain as his counsel and advise him of his rights as to an appeal if he desires to take an appeal.

Mr. Russ: Yes, Your Honor.

The Court: I am going to defer the reporting time until November 23, 1979, at 10:00 o'clock in the morning, at which time you should report to the institution designated by the Bureau of Prisons at your own expense, or if you do not elect to do so at your own expense, you should report by that hour and date to the Marshal's Office in Miami, Florida, 300 Northeast First Avenue.

Bond continued on the same terms and conditions until the time of reporting.

Mr. Russ: Judge Roettger, may I make several requests of you?

First, as regards the matter of the Court suggesting to the Attorney General as to a suitable place of incarceration.

The Court: I would recommend Eglin Air Base, which seems most appropriate under the circumstances.

Mr. Russ: Thank you.

[3SR34] And assuming Mr. Wasman wants to take an appeal, and we will have to discuss that after this court session, I would respectfully ask the Court to stay the execution of the sentence in the event a notice of appeal is timely filed.

The Court: I have stayed the execution until November 23rd for reporting.

Mr. Russ: But I'd like you to, in the event the notice of appeal is filed, to allow him to continue on his same bail he is out on.

The Court: Can't be on the same bond but I will set a supersedeas if that's what you're asking—

Mr. Russ: That's what I'm asking, yes, Your Honor.

The Court: What bond is the Defendant on now?

Mr. Russ: \$50,000 personal surety, Your Honor?

The Court: Mr. Moore? Anything from the Government?

Mr. Moore: Your Honor, the Government would oppose it.

The Court: Pardon?

Mr. Moore: The Government would oppose it.

The Court: Do you have any reason to believe that he is involved in some kind of bildking [3SR35] operations or scams?

Mr. Moore: No, Your Honor.



The Court: I don't think he is likely to flee. Man lives in the same house for thirty-nine years is not likely to leave it. And I don't know that he is a threat to the community in view of the fact that you cannot advise me of any such operations. I cannot, from the nature of things, make that finding; therefore, I will set a supersedeas bond. I will set it in the amount of \$5,000 corporate surety and an additional \$50,000 personal recognizance. That, of course, is a supersedeas bond.

Mr. Russ: Yes, Your Honor.

The Court: Present bond continues in full force and effect on the same terms and conditions until the time of reporting. Notice of appeal is filed, \$5,000 personal surety and \$50,000 personal recognizance.

Mr. Russ: Yes, sir.

The Court: Anything further to come before the Court?

Mr. Russ: I have nothing further, Your Honor. Thank you.

The Court: Good luck to you, Mr. Wasman.

[3SR36] Court is in recess.

(Thereupon, the foregoing proceedings were concluded.)

#### CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

I, RUDY E. FOX, Official Court Reporter, do hereby certify that the foregoing transcript, consisting of

pages numbered from 1 to 35, inclusive, contains a true and correct transcript of my shorthand notes as taken by me from a recording of the proceedings that took place and the time and place aforesaid.

DATED at Fort Lauderdale, Florida, this 24th day of March, 1980.

/s/ RUDY E. FOX  
Official Court Reporter

